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IN THE

# Supreme Court of the United States

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THE CITY OF LOS ANGELES, a municipal corporation, and THE COUNCIL OF THE CITY OF LOS ANGELES, *Petitioners*,

v.

THE HOUSING AUTHORITY OF THE CITY OF LOS ANGELES, *Respondent*.

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## PETITION FOR WRIT OF CERTIORARI.

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners, The City of Los Angeles, a municipal corporation, and the Council of The City of Los Angeles, respectfully pray that a Writ of Certiorari be issued to review the decision of the Supreme Court of California in the case of *Housing Authority of the City of Los Angeles* v. *The City of Los Angeles, a municipal corporation, et al.*, entered on April 28, 1952, rehearing denied on May 19, 1952.

## OPINION BELOW.

The opinion of the Supreme Court of California is reported at 38 A. C. 920, 243 P. 2d 515. The denial of rehearing is reported at 39 A. C. 57.

## JURISDICTION.

The petition for rehearing of the decision of the Supreme Court of California was denied by said Court on May 19, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3). The case is an original proceeding in the Supreme Court of California for a writ of mandate to compel The City of Los Angeles to continue with the development of certain low-rent public housing projects. Petitioners here (The City of Los Angeles and Council thereof) filed a Demurrer (R. 68) and Answer (R. 88-98) in response to the petition for the writ of mandate. In the Memorandum of Points and Authorities filed in support of the demurrer, petitioners here set forth a proviso to the Independent Offices Appropriation Act, 1952 (Public Law 137, 82nd Congress, 1st Session, Ch. 376) and argued that the Act authorized the rejection by the governing body of the locality of public housing projects previously approved by the body (R. 82). In its Memorandum of Points and Authorities, respondent here (the Housing Authority of the City of Los Angeles) recognized that the City would rely on the argument that "the power to void the Cooperation Agreement is to be found in a proviso to the Independent Office Appropriation Act (Public Law 137, 82nd Congress, approved August 31, 1951) . . ." (R. 54). The California Supreme Court passed upon the question raised by petitioners as to the interpretation of the Act, ruling against petitioners' claim that the Federal Act conferred the power to reject the low-rent housing projects (38 A. C. 934, 928, R. 125).

## QUESTION PRESENTED.

A proviso of the Independent Offices Appropriation Act, 1952 (Public Law 137, 82nd Congress, 1st Session, Ch. 376) provides:

> "That the Public Housing Administration shall not, after the date of approval of this Act, authorize the construction of any projects initiated before or after March 1, 1949, in any locality in which such projects

have been or may hereafter be rejected by the governing body of the locality or by public vote, unless such projects have been subsequently approved by the same procedure through which such rejection was expressed."

The question presented is whether this proviso authorizes the local governing body to reject and thereby terminate public housing projects which had previously been approved by it.

## STATUTES INVOLVED.

The pertinent statutory provisions are printed in the Appendix, *infra*, page 22.

## STATEMENT OF FACTS.

The controversy has its origin in the ordinance adopted by the Council on August 8, 1949 (Exhibit 1 of Petition for Mandate, R. 29) which approved "the development, construction, and operation of a low-rent housing project or projects consisting of approximately ten thousand (10,000) dwelling units, in accordance with Section 8(b) of the Housing Authorities Law" (Chapter 4, Cal. Stats. of 1938, Extra Session, as amended, now Sec. 34313 Health and Safety Code). The ordinance also approved "the application of the Housing Authority of the City of Los Angeles to the Public Housing Administration for a preliminary loan for surveys and planning in respect to such projects." The ordinance further provided in section 3 thereof "that the City of Los Angeles shall enter into a Cooperation Agreement with the Housing Authority of the City of Los Angeles in accordance with Section 15(7)(b)(i) of the United States Housing Act of 1937, as further amended by the Housing Act of 1949," the form of which was set forth *verbatim*.

This Agreement was executed on August 9, 1949, the day following the adoption of the ordinance authorizing it

(Stip. of Facts, Par. V, R. 99, text R. 107-113). By its terms the Housing Authority undertakes to "develop, and administer a low-rent housing project or low-rent housing projects . . . consisting of approximately 10,000 family dwelling units on sites selected by the Authority in the City of Los Angeles * * * and to endeavor during the next three years to secure a contract or contracts with the Public Housing Administration for a Federal loan and for Federal annual contributions to assist in the development and administration of said projects." (R. 109) Provision is made for payments, in lieu of taxes, by the Authority and for furnishing municipal services and elimination of unsafe or insanitary dwelling units by the City. Paragraph 8 of the Cooperation Agreement provides:

> "The City and the Authority agree that this contract shall not be abrogated, changed or modified so long as any bonds or other obligations issued to aid in financing the development of the Projects to which this contract relates or any bonds issued to refund such bonds or obligations shall remain outstanding and unpaid and so long as the title to said Projects (except for the lien or title conveyed to secure any bonds or other evidences of indebtedness issued to aid in the financing of the Projects . . . ) is held by the Authority or some other public body or governmental agency authorized by law to engage in the development or administration of low-rent housing projects." (R. 111)

On March 22, 1951, the Council of The City of Los Angeles authorized the execution of a contract between the City and the Housing Authority whereby the City would acquire title to tax-deeded lands within proposed public housing sites and convey the same to the Authority for a price determined by the formula set forth in the agreement. (Stip. of Facts, Par. XI, R. 103).

The Public Housing Administration approved an application filed by the Housing Authority and issued a program reservation covering 10,000 units and approved a preliminary loan for surveys and planning. (Stip. of Facts, Par.

VI, R. 100). A preliminary loan contract was entered into on December 2, 1949, between the Housing Authority and the Public Housing Administration of the United States. (Stip. of Facts, Par. VII, R. 100). On October 27, 1950, an annual contributions contract was entered into between the Housing Authority and the Public Housing Administration and amended in certain particulars on November 7, 1950. (Stip. of Facts, Par. VIII, R. 100). Although the Housing Authority had undertaken some of the steps preliminary to construction of such project (R. 100-103), no actual construction on any of the sites had commenced.

The Council of The City of Los Angeles, by resolution adopted December 26, 1951 (Stip. of Facts, Par. XIV, R. 104, see full text R. 41), rejected, rescinded, cancelled and annulled the undertaking, development and administration of the low-rent housing project or projects contemplated by the Cooperation Agreement entered into between The City of Los Angeles and the Housing Authority of the City of Los Angeles on August 9, 1949, as set forth in Ordinance No. 95,222 (Exhibit 1 to Petition for Mandate, R. 29). The resolution also declared the Cooperation Agreement to be abrogated, rejected, annulled, rescinded and cancelled and of no further force or effect and all acts taken under the authority thereof rescinded. The resolution further declared rescinded, cancelled, annulled, and withdrawn, (1) the purported approval of the low-rent housing project or projects as contemplated by subsection (a) of section 9 of the Cooperation Agreement, (2) the purported approval of the application by the Housing Authority of the Public Housing Administration for a preliminary loan as contemplated by subsection (b) of section 9 of the Cooperation Agreement, and (3) the purported approval of the Agreement between The City of Los Angeles and the Housing Authority of the City of Los Angeles which is a prerequisite to the execution of a contract between said authority and the Public Housing Administration for loans and annual contributions.

On December 26, 1951, the Housing Authority of the City of Los Angeles filed as an original action in the Supreme Court of California, its petition for a writ of mandate to be directed to The City of Los Angeles and the individual members of its City Council. Petitioners here (respondents in that action) filed a Demurrer (R. 68) and Answer (R. 88-98) in response thereto. On April 28, 1952, the Supreme Court held that the City was not authorized under California statutes to reject public housing projects which it had previously approved, and the city was not authorized by federal law to reject or terminate such public housing projects and construed the federal law as requiring housing projects to be carried through to completion (R. 113-129). The Court thereupon ordered that a peremptory writ of mandate issue directing petitioners here to perform the terms of the agreements entered into with the Housing Authority and to proceed in the fullfillment of the obligations thereunder. (38 A.C. 938.)

Petitioners' petition for rehearing was denied by the Supreme Court of California on May 19, 1952 (R. 159). The writ of mandate was issued on June 27, 1952, after a petition for stay of the mandate was denied by the California Supreme Court on June 23, 1952, and subsequently by Justice Harold H. Burton of this Court.

## SPECIFICATION OF ERROR.

The Supreme Court of California erred: (a) in holding that the provisions of the Independent Offices Appropriation Act, 1952 (Public Law 137, 82nd Congress, 1st Session, Ch. 376) does not authorize a local governing body to reject and thereby terminate public housing projects which it has previously approved; and, (b) in holding that the United States Housing Act of 1937 does not permit the City to terminate a project once the City Council has declared a need for such project and given the requisite approvals therefor.

## REASONS RELIED UPON FOR THE GRANTING OF THE WRIT.

### I.

### The Right of a Locality to Exercise the Right Conferred by Congress to Reject a Public Housing Project Which Has Been Initiated is of Wide National Importance.

The questions presented are of the utmost importance to every city and state having housing projects financed by federal assistance, as well as to the Federal Government. The court below held that despite the clear language of the Independent Offices Appropriation Act, 1952 (Public Law 137, 82nd Congress, H.R. 3880, hereinafter referred to as Public Law 137) a city could not reject a housing project for which approval had previously been given. If this decision of the California court is allowed to stand there is left in doubt the future status of such housing projects which have been rejected by cities and the right of cities to reject housing projects in similar circumstances in the future. As of July 23, 1952 there were 968 Public housing projects of 144,539 units completed or under construction under the Housing Act of 1939.[1] (42 U.S.C. § 1401). Thirty-nine cities have rejected public housing projects by popular referendums as of June 27, 1952.[2]

Implicit in this vital question of statutory interpretation is the broader question of whether a city should not be able to terminate effectively a housing project which in view of changed circumstances is no longer regarded as desirable. In view of the manifested Congressional intention to forbid further construction on housing projects which have been rejected by a locality, it is of national importance that this Court should review and reverse the decision below, and hold that upon rejection by a locality of a housing project the Federal Government cannot proceed with its

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[1] Housing Newsletter, Housing and Home Finance Agency, Summer Issue, P. 2.

[2] Congressional Record, June 27, 1952, page 8426.

part in the project and the locality can thereby terminate its duty to proceed with the project.

Moreover, the interpretation of the court below that the United States Housing Act of 1937 (42 U.S.C. § 1401 *et seq.*) does not permit termination of a housing project after its inception, would place such serious restrictions upon the administration of the national housing program as to adversely affect the public interest. Such an interpretation is contrary to the right of Congress to refuse further appropriation of funds and the right of the President within his discretion to allocate funds to the Public Housing Administration. To carry through a housing program which by reason of changed circumstances is no longer necessary, would, to say the least, be an extravagant waste of public funds and efforts.

The legal principle involved in this case reaches far beyond housing to the whole new field of direct federal-city relations—a field which is one of the dramatic developments of the past 20 years. There are today more than 40 Federal grants-in-aid programs whereby Federal funds are available to local governments for a wide variety of purposes.[1] Many of these programs are either on a direct Federal-city basis, or they require the exercise of the powers of local government for their beginning or ending. Yet this Court has not passed upon the validity of this type of Federal-local cooperation as to local power to act when, as in the instant case, Federal law authorizes action but state law is silent.

Realizing that through local government lies the quickest and surest approach to the people, the Congress has utilized the direct Federal-local legal machinery involved in this case in other laws not only in connection with grants-in-aid but in regulatory legislation. For example, Congress wanted the people in each locality to control their own fu-

[1] See Senate Report 94, 82nd Congress, 1st Session, "A Review of the Federal Grants-in-Aid Programs for the fiscal year 1950."

ture on rent control so it has made continuance or ending of Federal rent control in each local community dependent upon adoption of a resolution by local governing bodies, or approval or disapproval in a popular referendum in accordance with local law.[2] Here again this Court has not passed upon the power of Congress to confer such powers upon local governments. The principle involved is certainly directly applicable to the instant case.

This case therefore presents a new and novel question of vital consequence in the field of inter-governmental relations between Federal, State and local governments. The legal principle upon which the California Supreme Court based its opinion, i.e., that the Federal statute which sets up a grant-in-aid program is not controlling on a subject expressly and directly covered by it, jeopardizes other Federal-city programs because it is believed that these programs in the past have proceeded upon the principle that Federal law did control upon subjects covered by it.

## II.

**The Plain and Unambiguous Language Used in the Proviso Contained in Public Law 137 Prevents the Public Housing Administration from Authorizing Construction of a Project Which Has Been Rejected by the Governing Body of a Locality, Regardless of the Stage of Development of the Project or Prior Action Taken by the Governing Body.**

In Public Law 137 the Congress provided that the Public Housing Administration shall not (1) authorize during the fiscal year 1951-1952 the commencement of construction of more than 50,000 dwelling units in projects initiated after March 1, 1949; or (2) "authorize the construction of any projects initiated before or after March 1, 1949 in any locality in which such projects have been or may hereafter be

[2] 61 Stat. 113, 65 Stat. 145, 66 Stat. 306; 50 U.S.C. § 1894.

rejected by the governing body of the locality or by public vote, unless such projects have been subsequently approved by the same procedure through which such rejection was expressed."

By the enactment of the above proviso Congress consented to rejection and termination of a project by the locality at any stage of development and regardless of any prior action taken by the governing body of the locality involved, and prevented the Public Housing Administration from authorizing construction of such a project. The provision is clear. The City may reject a project not before it is initiated but after it has been initiated.

However, the California Supreme Court in interpreting this provision said:

> "... This proviso does not purport to grant a power to the city. It was dealing with the authority of the Federal agency. As material here the proviso prohibits that agency's authorization of construction where the city had validly disapproved the project pursuant to State law. It does not purport to validate action of the City Council which is invalid under State law. It is quite apparent that the local rejection referred to is that by which the City might withhold approval of the project. It deals with future action of the agency. It does not contemplate a case where, as here, the City has approved the project and the Federal agency has authorized the construction. It does not give the agency power to rescind prior authorization of construction or repudiate the obligations incurred thereunder. ..."

The purpose and effect of the proviso contained in Public Law 137 above set forth is explained in the report of the Committee on Appropriations accompanying the Act (House Report No. 384, 82nd Congress, first session). It is stated in that report:

> "The Housing Act of 1949 authorizes the start of construction of 135,000 low rent housing units each year for six years commencing with July 1, 1949. In

view of the international situation only 30,000 units have been approved for construction between July 1 and December 31, 1950. The President reduced the construction program to an annual rate of 75,000 units beginning January 1, 1951. The committee has recommended a reduction in this program for the fiscal year 1952 to 50,000 units, due to a scarcity of materials and the war effort. The last proviso in the paragraph is to show expressly the intention of Congress that where a locality has disapproved or rejected low-rent projects, projects of that type shall not be constructed in the locality under authority granted by the Public Housing Administration until and unless the projects have been approved by the same procedure as that by which they had been rejected or disapproved."

Further legislative history in support of petitioners' interpretation of Public Law 137 and of the federal public housing program in general is found in the Senate debates on the Act. There, Senator Maybank (the floor manager for the bill), in the discussion of the number of units to be authorized for the fiscal year 1951-1952, made it emphatic that provision had been made for a community to reject further construction of housing projects therein.

"Mr. Wherry: The Senate increased the number of 50,000, and the Senate amendment prevailed.

"Mr. Maybank: That is true, except for one provision, to the effect that if a community desires, through its governing body, to vote not to have housing projects, it may do so; and provided further, that they may, if they wish — and I desire to make this perfectly clear, so that there will be no misunderstanding — cancel a contract which has been made for public housing. But, of course, they will be responsible for any money which the Government has put into the project.

"Mr. Wherry: Is this an extension of the Housing Act of 1949 with a maximum ceiling of 50,000 units?

"Mr. Maybank: The Senator is correct, except for the right of the governing body of a community to vote not to have public housing. The Senator knows how I

feel about that, and I think he feels the same way." (Congressional Record, August 16, 1951, page 10317.)[3]

Aside from the clear meaning evidenced by the Congressional Report and debates, an examination of the language of the proviso shows that the Supreme Court of California was in error in holding that the proviso is operative only in a situation in which the locality has not previously approved the project. The proviso speaks of the rejection by the governing body of the locality of "any projects initiated." Section 2(15) of the United States Housing Act of 1937, as amended (42 U.S.C. § 1402 (15)) provides that "the term 'initiated' when used in reference to the date on which a project was initiated refers to the date of the first contract for financial assistance in respect to such project entered into by the Administration and the public housing agency." Since Section 15(7) of the Act (42 U.S.C. § 1415(7) provides that no contract for financial assistance shall be made unless the local governing body has approved the project it is obvious that a project "initiated" is one that has already been approved by the local governing body.[4] The plain meaning of the words "projects initi-

[3] The importance of statements as to the meaning of particular provisions of the pending legislation by its sponsors during debates on the floor of Congress has been often recognized by the Court. See *Schwegmann Brothers* v. *Calvert Distillers Corp.*, 341 U. S. 384, 394-395.

[4] The fact that approval by the locality precedes initiation was recognized by the California Supreme Court in another case, *Drake* v. *City of Los Angeles*, 38 A. C. 738, 243 P. 2d 525, decided concurrently with the instant case, in which it was said:

> ". . . At the time when approval is required by the City no surveys or plans have been made or undertaken to determine the location or details of construction in connection with the project. In fact, no work on a proposal for the development, construction or ownership of the project by the housing authority could be undertaken until the City had given its approval. The Housing Authority could take no step to conduct surveys and formulate plans until the City approved the project . . ."

ated" is that the projects have been started and are not awaiting approval.

Thus, when Congress speaks of rejection of "projects initiated" it is referring (contrary to the holding of the California Supreme Court) to projects which have started or proceeded in development beyond the point at which the City might have withheld its approval of said projects in the first place. In the present case, therefore, the proviso authorized the City to reject the public housing project despite the prior approvals of said project. The holding of the California Supreme Court to the contrary is squarely in conflict with the proviso granting authority to localities to reject projects previously initiated.

In addition, the federal laws on public housing are in terms of authorization of projects and the grant of financial assistance for them after local approval of such projects. There is no support in the Housing Act of 1937, as amended (42 U.S.C. § 1401 *et seq.*) for any inference that the Federal Government has embarked on a building program as the constructor of public housing. There is no attempt in the federal public housing statutes to impose such projects on unwilling localities. When a situation is created in which a locality has declared that it does not desire to go forward with a project previously approved, the federal plan is one of withdrawal of authorization of such construction and cessation of financial assistance. This was manifested in statutory form by the proviso in Public Law 137 set out above and should be given full effect.

The fundamental intent of the United States in its public housing program would be violated by a holding that the Congress cannot and has not authorized local governing bodies to reject and thereby terminate housing projects previously approved. Thus, the declared policy of Congress in enacting the United States Housing Act of 1937 is "to promote the general welfare of the Nation by employing its funds and credit . . . to assist the several states and their political subdivisions . . ." (42 U.S.C. § 1401).

As stated in the quotation above from the report of the Committee on Appropriations accompanying Public Law 137, the plan in 1949 was to authorize the start of construction at the rate of 135,000 units each year for six years commencing July 1, 1949, but only 30,000 units were approved for construction between July 1 and December 31, 1950, and the Committee recommended that only 50,000 units be authorized for 1952 instead of the 75,000 units as recommended by the President. It is thus seen that the question of the number of units, the construction of which is to be authorized, is one to be determined by Congress from year to year and has no relation to units or projects which may be planned or contemplated by virtue of any agreements between the Public Housing Administration and local housing agencies. It is clear that the intent of Congress is to limit on a nation-wide basis, in the light of existing circumstances, the number of units the construction of which is to be authorized in any given period, whether it be for a single fiscal year or for a series of years.

In imposing this limitation upon the construction of housing units from time to time, what could be more logical than to provide a means whereby assurance would be afforded that the limited number of units available be allocated to those areas currently desiring them instead of to areas in which changed conditions no longer make desirable further development of the local program. This was accomplished by the inclusion of the proviso in Public Law 137 set out above. One device used to achieve the goal of efficient use of available funds for public housing is that of local rejection of a housing project after it has been initiated; such rejection must be treated by the Public Housing Administration as terminating the project.

From a consideration of the nature and purpose of the Housing Act of 1937 and the practice prevailing in the annual appropriation of funds for the maintenance and activity of the Public Housing Administration, it is clear that when the governing body of a locality rejects a housing

project then under development, the Public Housing Administration shall not thereafter authorize construction of the project.

## III.

### The Right of a Locality to Reject and Terminate a Housing Project Under Public Law 137 Is Not Dependent Upon State Law.

In the opinion of the Supreme Court of California there is an implication that the right of a locality to reject and thereby terminate a housing project under Public Law 137 is somehow measured by and dependent upon State law. This is manifestly erroneous.

The entire scheme of the public housing laws is inconsistent with the suggestion that the right of a locality to reject and terminate a project is restricted by State law. The federal public housing plan entails not only cooperation between the federal and local agencies but the construction of state law to make it consistent with the paramount federal legislation.

In this instance, Congress provided that construction of housing projects should not be carried out in communities which have declared that such projects are no longer wanted. As we have seen the purpose of authorizing this local rejection was to insure that the limited number of housing units authorized would be allocated to areas throughout the nation where they are still wanted. With this in mind the statutes should be construed as providing for a cooperative effort between Congress and local governing bodies to distribute the limited number of housing units efficiently throughout the nation. It would thwart the obvious intent of Public Law 137 to say that the right of a locality to terminate a project is dependent upon the laws of a particular state and could not be effective unless state law allowed rejection.

A number of recent federal and state cases have emphasized the principle that the laws of the several states are

to be construed in a spirit of harmony and cooperation with applicable federal statutes.

This Court in *International Union of United Automobile, etc. Workers* v. *O'Brien*, 339 U. S. 454, in holding that a state statute was in conflict with the National Labor Management Relations Act said at page 459:

> ". . . A state statute so at war with federal law cannot survive.
>
> * * * * * * * * *
>
> ". . . Clearly, we reaffirm the principle that if 'Congress has protected the union conduct which the State has forbidden . . . the state legislation must yield.' "

The Supreme Court of California in *Miller* v. *Municipal Court*, 22 Cal. 2d 818; 142 Pac. 2d 297, in holding that a state court of competent jurisdiction must entertain a consumer action authorized by the Emergency Price Control Act of 1942, rendered a lengthy opinion discussing the history of federal and state relations. In language almost directly applicable to the present situation, the Court said:

> "Certainly the complete separation of federal and state administration was not contemplated by the framers of the Constitution.
>
> * * * * * * * * *
>
> "Early congressional legislation clearly reveals that those adopting the Constitution were of the opinion that the federal government would utilize the services of state officers in the execution of federal powers by virtue of the provisions of article VI relating to the supremacy of the Constitution and laws of the Union and to the administration of oaths to the officers of the states, binding them to support the federal Constitution.
>
> * * * * * * * * *
>
> "The course of judicial decision on the issue of the utilization by Congress of the states as agencies for the execution of federal powers has been a wavering and uncertain one.
>
> * * * * * * * * *

"Considering the respective fields of authority in our federal system of government, there are two conflicting concepts of the relationship between the nation and the states—the principle of competition and that of cooperation. It has been said on good authority, that with certain notable exceptions (*Ex parte Siebold*, 100 U. S. 371 [25 L. Ed. 717]; *Hoke* v. *United States*, 227 U. S. 308, 322 [33 S.Ct. 281, 57 L. Ed. 523]) the competitive conception of the federal relationship was dominant in the century following the death of Mr. Chief Justice Marshall. (E. S. Corwin, Constitutional Revolution, Ltd. (1941), pp. 97, 98). But, particularly within the last decade, the courts have increasingly recognized the cooperative nature of our federal system and that there are, in fact, no reserved state powers which may be asserted in hostility to the authorized exercise of federal power. (*United States* v. *Darby*, 312 U. S. 100, 123, 124 [51 S.Ct. 451, 85 L. Ed. 609, 132 A.L.R. 1430]; and see W. F. Dodd, *The Decreasing Importance of State Lines*, 27 Am. Bar Assn. Journ. 78.)

* * * * * * * *

". . . As Congress, in the lawful exercise of a constitutional power, by its statutes declares the policy for both the people and the states (see Second Employers' Liability Cases, *supra*, p. 57), so does it declare the policy of the people and of the states with regard to the enforcement of a law such as the Emergency Price Control Act of 1942. In enforcing that act by assuming jurisdiction of a consumer action pursuant to congressional mandate, in the course of the exercise of its ordinary jurisdiction, a state court is not entertaining an action created by a totally unrelated sovereign, but is merely yielding to the superior exercise of a lawful right granted Congress by the United States Constitution." (22 Cal. 2d at 842; 142 Pac. 2d at 311).

*City of San Diego* v. *Van Winkle*, 69 Cal. App. 2d 237; 158 Pac. 2d 774, concerned the propriety of an injunction against the use of a home as a two-story family dwelling contrary to a San Diego zoning ordinance during the then present war emergency and housing shortage in that city,

where enforcement of the ordinance would conflict with regulations issued under authority of the Emergency Price Control Act of 1942. The Court held that enforcement of the injunction should be suspended and said:

> "The doctrine that federal laws or regulations passed under constitutional authority suspend state or local laws or regulations in conflict with them is not new. In *Florida* v. *Mellon*, 273 U. S. 12 [47 S.Ct. 265, 71 L. Ed. 511], it was said:
>
> " 'The act is a law of the United States, made in pursuance of the Constitution, and therefore the supreme law of the land, the Constitution or laws of the states to the contrary notwithstanding. Whenever the constitutional powers of the federal government and those of the state come into conflict, the latter must yield. (Citing cases.)' " (69 Cal. App. 2d at 245; 158 Pac. 2d 778.)

The controlling principle was succinctly stated by the California District Court of Appeal in *Ex Parte Morgan*, 86 Cal. App. 2d 217, 223; 194 Pac. 2d 800, 804:

> " 'If a state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in reference to matters on which it is empowered by the Constitution to legislate the former must yield to the superior force of the latter. *Hines* v. *Davidowitz*, 312 U. S. 52, 67; 61 S.Ct. 399; 85 L. Ed. 581, 587. . . .' "
>
> See also, *Burke* v. *O'Brien*, 47 So. 2d 777 (Fla.) and *Oklahoma* v. *U. S. Civil Service Commission*, 330 U. S. 127.

While it is clear that the right of a locality to reject and thereby terminate a project under Public Law 137 cannot be restricted by state law, it is entirely proper that Public Law 137 comes into operation upon the occurrence of local action. *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 592. The federal public housing statutes are rendered more effective by the provision that local governing bodies can reject projects no longer necessary or desirable, thus freeing federal funds for needed housing elsewhere.

## IV.

### The United States Housing Act of 1937 Must Be Construed as Permitting the Termination of a Housing Program After Its Inception.

The declared policy of the Housing Act of 1937, as set forth in section 1 (42 U.S.C. § 1401) was not merely to furnish funds and credit for the construction of low-rent housing units (the subject matter of the contracts here in question). Rather, the policy was to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income *that are injurious to the health, safety and morals of the nation.* The state law (Sec. 34201, California Health and Safety Code) declares the same fundamental purpose or objective.

Thus the construction of low-rent housing with public funds is dependent upon a finding that the public health, morals, and safety require it. No project may be commenced until such finding is made. It follows that a later finding that such need no longer exists should allow termination of the project. (See, *Cleveland* v. *United States,* 323 U. S. 329, 331, 333; *Housing Authority* v. *Dockweiler,* 14 Cal. 2d 437, 450-452, and cases therein cited; 94 P. 2d 794, 801-802.)

The local City Council is the only body authorized by both the Federal Act and the State Acts (Housing Authorities Law and Housing Cooperation Law, secs. 34200-34368, and 34500-34521 of the California Health and Safety Code) to make these findings upon which the expenditure of federal funds is dependent. The Housing Act of 1937, as amended, recognizes the City's power in this respect. For instance, Section 15 provides:

> "(7) In recognition that there should be local determination of the need for low-rent housing to meet needs not being adequately met by private enterprise . . ." (42 U.S.C. § 1415).

See also, 42 U.S.C. § 1410(a) and (h), and § 1415(7)(a) and (b).

The State Acts, as stated above, likewise call for these vital determinations to be made by the local govening body. (See Secs. 34240, 34241, 34243 and 34313 of the California Health and Safety Code). These sections provide that a local housing authority may not even begin to function until the local governing body determines there is a need for it, and that no project may be developed, constructed or owned by a local authority until the local governing body approves it.

Just as the whole Public Housing program is dependent upon a finding by the City Council that the public health, morals and safety require such housing, so also it is clear that the power of the City Council to abandon projects when it finds such necessity no longer exists is inherent in the Federal and State Acts. After rejection of the projects by the local governing body further expenditure of public funds would be contrary to the policy and intent of the Acts.

By holding that the federal housing statutes do not permit a city to terminate a housing program for any reason, but that a city is bound forever by its original finding and approval, regardless of changed conditions, the California Supreme Court seriously impaired the usefulness of such statutes. The error in the Court's interpretation is that total importance is placed upon the *means* provided by the Act, namely, low-rent housing, and that no importance is accorded to the *end or goal* sought to be achieved thereby, namely, the alleviation of unemployment and the abatement of conditions which are injurious to the public health, morals and safety. Under the requirement of the federal and state statutes that findings as to the need for the housing projects be made by the local governing body, Congress clearly intended to grant authority to a city to terminate a housing program upon a finding by it that the public health, morals, safety and conditions of unemployment no longer require such housing program.

## CONCLUSION.

The decision of the Supreme Court of California is erroneous in failing to recognize that the Act of Congress herein relied upon by Petitioners is not dependent upon state law for its effectiveness. We believe the question presented by this Petition is not only one of first impression but that it is substantial and of great public importance, not only in the public housing field but in other fields of inter-governmental relations because of the tremendous growth in recent years of Federal grants in aid programs.

For these and the foregoing reasons, this petition for a writ of certiorari should be granted.

In the event this Court should grant the petition for a writ of certiorari in this cause, petitioners request the Court to enter an order staying the enforcement of the judgment below.

Respectfully submitted,

THE CITY OF LOS ANGELES AND
THE COUNCIL OF THE CITY OF
LOS ANGELES
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## APPENDIX.

### Pertinent Portions of the United States Housing Act of 1937, as Amended.

(U. S. C. A., TITLE 42, CH. 8, SECS. 1401 TO 1433)

*"Section 1401. Declaration of policy*

"It is declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in urban and rural nonfarm areas, that are injurious to the health, safety, and morals of the citizens of the Nation."

*"Section 1402. Definitions* * * *

*"Development*

"(5) The term 'development' means any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment, in connection with a low-rent housing project. The term 'development cost' shall comprise the costs incurred by a public housing agency in such undertakings and their necessary financing (including the payment of carrying charges, but not beyond the point of physical completion), and in otherwise carrying out the development of such project. Construction activity in connection with a low-rent housing project may be confined to the reconstruction, remodeling, or repair of existing buildings.

*"Public housing agency*

"(11) The term 'public housing agency' means any State, County, municipality, or other governmental entity or public body (excluding the administration), which is authorized to engaged in the development or administration of low-rent housing or slum clearance. The Administration shall enter into contracts for financial assistance with a State or State agency where such State or State agency makes application for such assistance for an eligible

project which, under the applicable laws of the State, is to be developed and administered by such State or State agency.

*"Initiated*

"(15) The term 'initiated' when used in reference to the date on which a project was initiated refers to the date of the first contract for financial assistance in respect to such project entered into by the Administration and the public housing agency."

*Section 1403* provides for the creation of the Public Housing Administration (known as the United States Housing Authority, prior to 1947) and the vesting of its powers in a Public Housing Commissioner (known as the Administrator, prior to 1947).

*Section 1404* sets forth the powers of the Public Housing Commissioner.

*"Section 1409. Loans for low-rent housing and slum-clearance projects.*

"The administration may make loans to public-housing agencies to assist the development, acquisition, or administration of low-rent housing or slum-clearance projects by such agencies. . . ."

*Section 1410(a)* provides that the Administration may make annual contributions to "public housing agencies," but prohibits it from making such contributions or capital grants or loans unless the governing body of the locality involved has entered into an agreement with the public housing agency providing for the elimination of a certain number of unsafe and insanitary dwelling units.

*"Section 1410(h) Exemption of projects from taxes; payments in lieu of taxes; contribution by States, city, county or other political subdivision*

"Every contract made pursuant to this chapter for annual contributions for any low-rent housing project initiated after March 1, 1949, shall provide that no annual

contributions by the Administration shall be made available for such project unless such project is exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivision. . . .".

"*Section 1411 Capital grants in assistance of low rentals Authorization*

(a) As an alternative method of assistance to that provided in section 1410 of this title, when any public housing agency so requests and demonstrates to the satisfaction of the Administration that such alternative method is better suited to the purpose of achieving and maintaining low rentals and to the other purposes of this chapter, capital grants may be made to such agency for such purposes. . . ."

"*Section 1413 Powers of Administration; miscellaneous Foreclosure and other rights*

"(a) The Administration may foreclose on any property or commence any action to protect or enforce any right conferred upon it by any law, contract, or other agreement. The Administration may bid for and purchase at any foreclosure by any party or at any other sale, or (pursuant to section 22 or otherwise) acquire or take possession of any project which it previously owned or in connection with which it has made a loan, annual contribution, or capital grant; and in such event the Administration may complete, administer, pay the principal of any interest on any obligations issued in connection with such project, dispose of, and otherwise deal with, such projects or parts thereof, subject, however, to the limitations elsewhere in this chapter governing their administration and disposition."

*Section 1415* provides, in part, that the payment of annual contributions by the Public Housing Administration may be reduced or terminated in the event of substantial breach of the contract therefor by the local agency. In 1949 the following provisions were added to the section:

"(7) In recognition that there should be local determination of the need for low-rent housing to meet needs not being adequately met by private enterprise

"(a) The Administration shall not make any contract with a public housing agency for preliminary loans • • •

(i) unless the governing body of the locality involved has by resolution approved the application of the public housing agency for such preliminary loans; * * *

"(b) The Administration shall not make any contract for loans (other than preliminary loans) or for annual contributions * * * (i) unless the governing body of the locality involved has entered into an agreement with the public housing agency providing for the local cooperation required by the Administration * * *."

"*Section 1417 Capital stock of Authority*

"The Authority shall have a capital stock of $1,000,000, which shall be subscribed by the United States and paid by the Secretary of the Treasury out of any available funds. Receipts for such payment shall be issued to the Secretary of the Treasury by the Authority and shall evidence the stock ownership of the United States of America."

"*Section 1419. Allocation of other funds to Authority*

"Any funds available under any Act of Congress for allocation for housing or slum clearance may, in the discretion of the President, be allocated to the Authority for the purposes of this chapter."

*Section 1420* provides for the issuance of obligations by the Public Housing Administration.

"*Section 1421(a) Private financing—Sale of public housing agencies' bonds*

"To facilitate the enlistment of private capital through the sale by public housing agencies of their bonds and other obligations to others than the Administration, in financing low-rent housing projects, and to maintain the low-rent character of housing projects—

"*Contracts for annual contribtions; terms and conditions*

"(a) Every contract for annual contributions (including contracts which amend or supersede contracts previously made) may provide that—

"(1) upon the occurrence of a substantial default in respect of the covenants or conditions to which the public

housing agency is subject (as such substantial default shall be defined in such contract), the public housing agency shall be obligated at the option of the Administration, either to convey title in any case where, in the determination of the Administration (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of this chapter, or to deliver possession to the Administration of the project, as then constituted, to which such contract relates; . . .".

Section 1421(a) also provides that the annual contributions may be pledged by the local agency as security for the payment of the principal and interest on any of its obligations.

**Independent Offices Appropriation Act, 1952 (Public Law 137, 82nd Congress, 1st Session, Ch. 376).**

* * * * * * * *

"PUBLIC HOUSING ADMINISTRATION

"Annual contributions: For the payment of annual contributions to public housing agencies in accordance with section 10 of the United States Housing Act of 1937, as amended (42 U.S.C. 1410),[29] $10,000,000: *Provided*, That except for payments required on contracts entered into prior to April 18, 1940, no part of this appropriation shall be available for payment to any public housing agency for expenditure in connection with any low-rent housing project, unless the public housing agency shall have adopted regulations prohibiting as a tenant of any such project by rental or occupancy any person other than a citizen of the United States, but such prohibition shall not be applicable in the case of a family of any serviceman or the family of any veteran who has been discharged (other than dishonorably) from, or the family and any serviceman who died in, the Armed Forces of the United States within four years prior to the date of application for admission to such housing: *Provided further*, That all expenditures of this appropriation shall be subject to audit and final settlement by the Comptroller General of the United States under the provisions of the Budget and Accounting Act of 1921, as

[29] 42 U.S.C.A. sec. 1410.

amended:[30] *Provided further,* That notwithstanding the provisions of the United States Housing Act of 1937, as amended, the Public Housing Administration shall not, with respect to projects initiated after March 1, 1949, authorize during the fiscal year 1952 the commencement of construction of in excess of fifty thousand dwelling units: *Provided further,* That the Public Housing Administration shall not, after the date of approval of this Act, authorize the construction of any projects initiated before or after March 1, 1949, in any locality in which such projects have been or may hereafter be rejected by the governing body of the locality or by public vote, unless such projects have been subsequently approved by the same procedure through which such rejection was expressed.

"Administrative expenses: For administrative expenses of the Public Housing Administration, $9,500,000, to be merged with and expended under the authorization for such expenses contained in title IV of this Act."

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**City Council Resolution Rejecting Los Angeles Housing Projects.**

IT IS HEREBY RESOLVED by the Council of The City of Los Angeles, being the governing body thereof, as follows:

1. The undertaking, development and administration of a low-rent housing project or low-rent housing projects consisting of approximately 10,000 family dwelling units by the Housing Authority of The City of Los Angeles, as contemplated by that certain Cooperation Agreement entered into between The City of Los Angeles and the Housing Authority of The City of Los Angeles, California, on the 9th day of August, 1949, be and they are hereby rejected, rescinded, cancelled, and annulled.

2. Said Cooperation Agreement of August 9, 1949, and each and every part thereof, is hereby abrogated, rejected, annulled, rescinded, and cancelled and shall be of no further force or effect and all acts taken under the authority thereof are hereby rescinded.

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[30] 31 U.S.C.A. sec. 1 *et seq.*

3. The purported approval of said low-rent housing project or projects as contemplated by Subsection (a) of Section 9 of said Cooperation Agreement is hereby rescinded, cancelled, annulled, and withdrawn.

4. The purported approval of the application by the Authority to the Public Housing Administration for a preliminary loan as contemplated by Subsection (b) of Section 9 of said Cooperation Agreement is hereby rescinded, cancelled, annulled, and withdrawn.

5. The purported approval of the Agreement between the City and the Authority, which is a prerequisite to the execution of a contract between the Authority and the Public Housing Administration for loans and annual contributions, is hereby rescinded, cancelled, annulled, and withdrawn.

6. The City Clerk is hereby authorized and directed to certify to the adoption of this resolution and to transmit copies thereof so certified to the Housing Authority of The City of Los Angeles, California, and to the United States Public Housing Administration at Washington, D. C.

Presented by Councilman Ed J. Davenport, 12th District.

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IN THE

# Supreme Court of the United States

October Term, 1952.

No. 269

THE CITY OF LOS ANGELES, a municipal corporation, and THE COUNCIL OF THE CITY OF LOS ANGELES,

*Petitioners,*

*vs.*

THE HOUSING AUTHORITY OF THE CITY OF LOS ANGELES,

*Respondent.*

## BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

### Opinion Below.

The opinion of the Supreme Court of California [R. 113-129] is reported in 38 Cal. 2d 853, 243 P. 2d 515.

### Jurisdiction.

The facts upon which the jurisdiction of this Court depends are correctly stated in the petition for certiorari, page 2. There is in that statement, however, an erroneous characterization of the nature of this case which needs to be corrected, since in its incorrect form it carries connotations with respect to the City's role in public housing

which can distort analysis of the question involved. Contrary to petitioners' assertion, mandate (the California equivalent of *mandamus*) was not sought below "to compel The City of Los Angeles to continue with the development of certain low-rent public housing projects . . ." [Pet. 2.] It was sought and granted to compel the City to perform the terms of certain contracts relating to these projects into which it had validly entered with the Housing Authority of the City of Los Angeles. [R. 23, 129.] The latter agency, as the California Supreme Court held, is a separate and independent body corporate and politic, created by the State and neither controlled by nor subject to the dictates of the City. The Housing Authority, not the City, develops, constructs and administers federally-aided public housing projects in California. [R. 119-122; *Cal. Stats.* Ex. Sess. 1938, c. 4, pp. 10, 12, 14, secs. 3(a), 4, 8, now *Cal. Health & Safety Code*, secs. 34203, 34240, 34310.[1]] The question whether the City can force such an independent political entity to abandon its public functions is obviously quite a different one from whether the City may discontinue some of its own activities.

## Question Presented.

1. The Supreme Court of California held that a city such as petitioner had no power under state law to reject the housing projects here involved or to abrogate or annul either its approval thereof or the contracts with the respondent Housing Authority into which it had entered. [R. 118-124, 126-129.] That construction of the local

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[1]All local statutes referred to are printed in the appendix to this brief.

law is, of course, binding upon this Court and not open to review here. [*Acro Mayflower Transit Co. v. Board of R. R. Commrs.*, 332 U. S. 495, 499-500; *United States v. Burnison*, 339 U. S. 87, 89; *Forsyth v. Hammond*, 166 U. S. 506, 518.] The only question properly cognizable now, is whether, after the projects had been approved by the City and valid and binding contracts had been entered into between the City and the Housing Authority and between the Housing Authority and the United States Public Housing Administration, the City, notwithstanding that the State has withheld from it any power in these circumstances to reject or abrogate the projects, was given that power of rejection and abrogation by a proviso in the Independent Offices Appropriations Act, 1952, *infra*, prohibiting the United States Public Housing Administration from authorizing the construction of any projects "rejected by the governing body of the locality or by public vote . . ." The State Supreme Court held that no such power was given.

2. Although the petition for certiorari argues that a power of rejection may be derived from a consideration of the United States Housing Act of 1937 as a whole, as distinguished from the specific provisions of the proviso in Public Law 137 [Pet. 19-20], no such question was raised or decided below. There the present petitioners' sole reliance, so far as Federal law was concerned, was on Public Law 137. [R. 82-84, 92-94, 131-135.]

3. The petition places considerable emphasis on the proposition that Federal law is supreme, so that inconsistent state laws must give way. [Pet. 15-18.] No question of that sort is involved in this cause nor was anything in respect of it decided below. The California Supreme Court was not asked to hold and it did not hold

that a Congressional grant of power to reject was ineffective as against the State's denial of such a power. What it held was that the Congress had not conferred the asserted power on the City at all.

## Statute Involved.

In order that the proviso of Public Law 137 may conveniently appear in context, we quote it along with the general provision to which it is an exception:

> "The following sums are appropriated . . . for the fiscal year ending June 30, 1952 namely:
>
> * * * * * * * *
>
> "Public Housing Administration.
>
> "Annual contributions: For the payment of annual contributions to public housing agencies in accordance with Section 10 of the United States Housing Act of 1937, as amended (42 U. S. C. 1410), $10,000,000: . . . *Provided further*, That notwithstanding the provisions of the United States Housing Act of 1937, as amended, the Public Housing Administration shall not, with respect to projects initiated after March 1, 1949, authorize during the fiscal year 1952 the commencement of construction of in excess of fifty thousand dwelling units: *Provided further*, That the Public Housing Administration shall not, after the date of approval of this Act, authorize the construction of any projects initiated before or after March 1, 1949, in any locality in which such projects have been or may hereafter be rejected by the governing body of the locality or by public vote, unless such projects have been subsequently approved by the same procedure through which such rejection was expressed."

## Statement of the Case.

Petitioners' statement of facts is correct as far as it goes. It omits, however, a great deal of the story which it is desirable to have for a clearer understanding of the significance of the question involved. Accordingly, we present a narrative statement of the case which duplicates only in small part that of the petitioners:

On August 8, 1949, the Housing Authority of the City of Los Angeles proposed, and the Council of the City of Los Angeles, as required by the California Housing Authorities Law [*Cal. Stats.* 1945, c. 466, p. 1450, sec. 1, now *Cal. Health & Safety Code*, sec. 34313] approved, the development, construction and operation of low-rent public housing projects to consist of approximately 10,000 units, within the City of Los Angeles. [R. 29-30, 99.] At the same time the Council approved the Authority's application to the United States Public Housing Administration for a preliminary loan; and, as expressly permitted by the California Housing Cooperation Law [*Cal. Stats.*, Ex. Sess. 1938, c. 2, p. 3, sec. 4(c), now *Cal. Health & Safety Code*, sec. 34515], authorized and directed the Mayor and City Clerk, on behalf of the City, to enter into a cooperation agreement with the Authority. [R. 30.]

Pursuant to that authorization the cooperation agreement was executed on August 9, 1949. In it the City, among other promises, agreed "to cooperate with the Authority by vacating without cost to the Authority such streets . . . within the area of the Projects, or adja-

cent thereto, as may be necessary in the development of such Projects . . . and by such other lawful action or ways as the Authority may find necessary in connection with the development and construction of the Projects." [R. 32-33, 99.] The contract went on to recite that it should "not be abrogated, changed or modified," so long as the bonds or other evidences of the Authority's indebtedness should remain outstanding. [R. 33.]

The preliminary loan, the application for which had been approved by the City Council, was granted and substantial advances on account of it made to the Authority by the United States Public Housing Administration. [R. 5-6, 100.] With the funds thus supplied the Authority employed the necessary technical and other staffs and prosecuted the extensive preliminary studies and planning necessary to development of the projects. [R. 7-8, 101.]

On October 27, 1950, the Authority entered into a loan and annual contributions contract with the United States Public Housing Administration. The Administration thus obligated itself (a) to advance up to $44,694,-800.00 to assist in the development of the projects, and, (b) to make necessary annual contributions over a period of forty years to assist in achieving and maintaining their low-rent character. [R. 6, 100.] To the date of the repudiating actions of the City hereinafter referred to, the Administration under this and the preliminary loan contract had advanced to the Authority or had guaranteed

private loans to the latter amounting to the aggregate sum of about $13,000,000.00. The Authority's evidences of indebtedness for this amount were and are outstanding. [R. 6-7, 100.]

Shortly after the annual contributions contract had been executed the City Council, at the request of the Authority approved the nature, location, extent, and the acquisition by the Authority, of eleven specifically described sites for the proposed projects. [R. 8-9, 36-40, 101-102.] Still later, on March 22, 1951, the City entered into another contract with the Authority by which, conformably to a statutory procedure available in California, the City agreed to acquire and convey to the Authority, at the latter's expense, a large number of lots, located within the project sites, which had been sold to the State for tax delinquencies. [R. 12-13, 103.]

Thereafter, in order further to assure compliance with the City's zoning plan [see *Cal. Health & Safety Code*, sec. 34326] the matter of conformity of the projects to that plan was submitted to the Council, pursuant to the local procedure provided in such cases. After due hearing the Council, on June 26, 1951, again approved the projects by the necessary two-thirds majority. [R. 11-12, 102-103.]

In the meantime, the Authority proceeded with the planning and design of the projects and the acquisition, by eminent domain as well as private negotiation, of the project sites. A considerable part of the necessary land had been acquired by December 26, 1951, at a cost of

over $8,000,000.00; and eminent domain proceedings to acquire the remainder were in the course of active prosecution by that date. [R. 9-10, 102.] The City acquired and was acquiring the tax-delinquent lots, preparatory to conveying them to the Authority. [R. 13, 103.] Requests had been lodged with the City for closing of streets which traverse the sites in such a way as to require that they be closed in order to permit construction. These requests were pending at the time of the repudiation. [R. 14, 103-104.] On two of the projects, development had proceeded to the point where construction was authorized by the United States Public Housing Administration. Bids for that construction were called for and received. A contract for one of these projects was awarded and the other was about to be, when the City repudiated. [R. 11, 102.] For these and allied activities in connection with the projects the Authority has already expended or obligated itself to expend in excess of $13,000,000.00. [R. 9-11, 102.]

That was, in general terms, the situation on December 26, 1951, when, by action of the City Council which the State Supreme Court has held to be utterly without warrant or justification in law, the entire program was brought to an abrupt halt. That action consisted of the adoption, by a bare majority of one, of a resolution of the Council purporting: (1) to reject "the undertaking, development and administration of the project . . ."; (2) to rescind, cancel, annul, and withdraw [a] "the purported approval of said low-rent housing project or

projects . . . [b] the purported approval of the application by the Authority to the Public Housing Administration for a preliminary loan . . . [c] the purported approval of the [Cooperation] agreement between the City and the Authority . . ."; (3) to abrogate, reject, annul, rescind and cancel "said Cooperation Agreement of August 9, 1949"; and (4) to declare that the agreement was of "no further force or effect" and that "all acts taken under the authority thereof are hereby rejected." [R. 14-18, 41, 104-105.]

Faced with this comprehensive and all-inclusive attempt at unilateral nullification, the Housing Authority applied to the Supreme Court of the State for a writ which would order the City to perform its obligations under the agreements into which it had entered with the Authority. [R. 1-23.] On April 28, 1952, that Court entered its judgment directing the issuance of a writ of mandate peremptorily commanding performance of those obligations. [R. 129.] In so doing, the California court held that no power of rejection or abrogation resided in the City under the law of the State [R. 118-124, 126-129]; and that no such power was conferred by the Independent Offices Appropriations Act. [R. 125-126.] It is to review the determination in this latter respect that certiorari is now sought by the City.

## ARGUMENT.

### I.

### Congress Did Not Give the City the Power, Withheld From It by the State, to Compel the Housing Authority, Which Is a Separate and Independent State Agency, to Abandon the Latter's Public Function of Developing Housing Projects in California.

1. If it was in fact intended by the Congress to confer the drastic power claimed by petitioner, the language employed to accomplish that purpose is remarkable for its obliquity. It takes only a reading of that language to see that it does not, in words at least, purport to grant any power whatever to any local body. Rather, it does no more than impose a limitation upon the powers of the United States Public Housing Administration in respect of the construction it may authorize during the fiscal year in question. [*Cf., Cox v. Hart,* 260 U. S. 427, 435; *Minis v. United States,* 40 U. S. (15 Pet.) 423, 445; *United States v. Dickerson,* 310 U. S. 554, 561; *United States v. Ewing,* 140 U. S. 142, 148.] So far as any power of rejection is involved, the proviso obviously assumes that the local body which will exercise it already has it from some other source. That source must necessarily be the local law, since no other Federal enactment is pointed to as conferring it and none, in fact, exists. That is all that the Supreme Court of California held in respect of the Federal statute invoked [R. 125-126]; and the decision in that regard plainly conforms to the words which the Congress used.

2. Had the Congress intended to grant to a city, or to the voters thereof, a power of rejection which does not exist under state law, the Federal statute would neces-

sarily have been far more comprehensive than it was. Assuming such a grant, where are to be found the statutory provisions governing the procedure by which a city's rejection is to be manifested? How many members "of the governing body of the locality" must vote for rejection? Must their action be taken by ordinance, by resolution or by motion? Is the approval of the Mayor or other chief executive officer of the city necessary, and if it is, may his disapproval be overridden?[2] These and many other questions of like import are left wholly unanswered by Public Law 137.

Similarly, in respect of rejection by the voters. When is the election to be held? By whom is the election to be called and conducted? What are the qualifications necessary to enable one to vote? Is anything more than a majority of those voters needed for adoption Here again, Public Law 137 supplies no answer.

But if, as is obviously the case, Public Law 137 refers only to a rejection manifested in the manner and to the extent permitted by local law, these glaring gaps in the enactment are filled. But by the same token, if the local law does not permit of any rejection, the power to reject does not exist for those agencies which are subject to that law.

3. The legislative meaning derived from the language of Public Law 137 and from its patent deficiencies as a grant of power, is buttressed by a consideration of the part which the United States plays in housing matters under the United States Housing Act of 1937, as amended. The

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[2]The resolution of rejection here involved was vetoed by the Mayor of the City and no attempt to override the veto was made. [R. 65-66, 105; Ex. 22.]

United States does not determine the need or lack of need for housing in any given locality; it does not initiate, develop, construct or operate the projects; nor does it create, select or empower the agencies who will perform those functions. It leaves these matters to the states for determination and execution in the manner provided by the local law.

Generally speaking, all that the United States does is to supply financial aid, in the form of loans, capital grants and annual contributions, to such local agencies as apply for it and are authorized by the "applicable laws of the State" to engage in public housing operations. [Act of Sept. 1, 1937, c. 896, secs. 2 (11), 9-11, 50 Stat. 888, 891, *et seq.*, 42 U. S. Code, secs. 1402(11), 1409-1411.] To provide the mechanics of supplying that aid the Public Housing Administration is authorized to "enter into contracts for financial assistance with a . . . State agency where such . . . State agency makes application for such assistance for an eligible project which, *under the applicable laws of the State,* is to be developed and administered by such . . . State agency."[3] [Act of Sept. 1, 1937, c. 896, sec. 2(11), 50 Stat. 888, 42 U. S. Code, sec. 1402(11). Italics ours.]

As the quoted statute demonstrates, the United States does not even designate the local agencies who are to be

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[3]A "State agency" is defined in the Federal Act as "any State, county, municipality, or other governmental entity or public body . . . which is authorized to engage in the development or administration of low-rent housing . . ." [Act of Sept. 1, 1937, c. 896, sec. 2(11), 50 Stat. 888; 42 U. S. Code, sec. 1402(11).]

Ordinarily, the U. S. Public Housing Administration requires, in the contract executed with such an agency that its authorization be obtained before any building is done. [See, *e. g., Petition for Writ of Mandate,* Ex. 5, sec. 106.]

authorized to develop and administer housing projects. Instead, it directs the execution of contracts for financial aid with whatever local agency is entrusted by State law with that function. The local agency so entrusted need not even be the city in which the project is to be built. It may be, as the State chooses, the State itself, a city or a county, or some other public agency created for the purpose by the State.[4] [Act of Sept. 1, 1937, c. 896, sec. 2(11), 50 Stat. 888, 42 U. S. Code, sec. 1402(11).]

The Congress has thus set up a plan of operation which leaves to the local law all questions of whether and to what extent housing projects should be developed; of which agencies should be charged with the power to engage in that development; and of the nature and extent of the powers which those agencies, and the municipalities in which they operate, are to have. It should take the clearest and most unmistakable expression of Congressional intent to justify construction of an isolated and temporary fragment of legislation as importing an abrupt and radical change into this general scheme. [See, *Fishgold v. Sullivan Drydock etc. Co.*, 328 U. S. 275, 285; *United States v. Cooper*, 312 U. S. 600, 607; *Vermilyea-Brown Co. v. Connell*, 335 U. S. 377, 386.] Yet it is precisely such a complete reversal of existing legislative policy that is urged by petitioners here. If they are right, the Congress

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[4]In California the agency selected by the State is not the city or county but the local housing authority. As the State Supreme Court held, and as the applicable California statutes make clear, that local body is an independent body politic, separate and distinct from the city or county in which it operates. [R. 119-122. *Cal. Stats.* Ex. Sess. 1938, c. 4, pp. 10, 12, 14, secs. 3(a), 4, 8, now *Cal. Health & Safety Code*, secs. 34203, 34240, 34310.] The city, or county as the case may be, is given no power to compel either the initiation or the cessation of housing programs within its area. [R. 118, 122-124, 126-129.]

for the first time since Federal aid to public housing began has injected itself into the local field and sought to deal with matters of local policy and regulation heretofore left to the States. Nor is that all. If petitioners are right, the Congress has granted to a city the power to control the activities of another and independent state body over which the State has given the city no power whatever. The language which Congress used is not direct or strong enough to bear that construction or to justify holding that Congress intended to intrude into a matter of such peculiarly local significance as the distribution of governmental power among the political subdivisions of one of the States.

4. The California Supreme Court's reading of the proviso in Public Law 137 is also supported by the necessity of avoiding, whenever possible, a construction which engenders serious constitutional doubts. [*Wright v. Mountain Trust Bank*, 300 U. S. 440, 461; *Interstate Commerce Com. v. Oregon-Wash. R. & Nav. Co.*, 288 U. S. 14, 40.]

As the petitioner here would have the statute read, it would authorize an agency of the state, *i. e.*, the City, not empowered so to do by state law, to cancel and abrogate unilaterally, contracts into which it had validly entered and which, as the very decision at bar determines, are specifically enforceable against it.[5] Obviously, the *ex post*

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[5]In California, a city, in matters affecting public housing, acts as an agent of the State pursuant to powers granted by the State. That proposition was clearly enunciated in the case at bar [R. 119] as well as in a companion case concurrently decided [*Drake v. City of Los Angeles*, 38 Cal. 2d 872, 243 P. 2d 525, 526] and in earlier decisions. [*Kleiber v. City and County of San Francisco*, 18 Cal. 2d 718, 724-725, 117 P. 2d 657, 659-660; *Housing Authority v. Superior Court*, 35 Cal. 2d 550, 558-559, 219 P. 2d 457, 461, 462.]

*facto* grant of such a power raises grave questions under the due process and contract-impairment clauses of the Federal Constitution.

". . . Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States . . ." [*Lynch v. United States*, 292 U. S. 571, 579.] Consequently, an attempt by the State or one of its subdivisions, or by the United States, to abrogate or annul a valid contract into which it has entered, contravenes the constitutional guaranty of due process. [*United States Constitution*, Articles V and XIV of Amendments; *Lynch v. United States, supra*, 292 U. S. at 579-580; *Perry v. United States*, 294 U. S. 330, 351-354.]

So, too, in view of the relationship of agency between the city and state in housing matters [note 5, *supra*] the former's abrogation of these contracts would be state action. [*Ross v. Oregon*, 227 U. S. 150, 162-163; *New Orleans Waterworks Co. v. Louisiana Sugar Ref. Co.*, 125 U. S. 18, 31; *Northern Ohio T. Co. v. Ohio*, 245 U. S. 574, 583, 584; *Iron Mountain R. Co. v. City of Memphis* (6 Cir.), 96 Fed. 113, 126.] And since the effect of that action, if otherwise allowable, would be to relieve the city of all obligation under its agreements thus destroying the contractual obligation completely, the applicability of the impairment clause is patent. [*United States Constitution*, Art. I, sec. 10; *Northern Ohio T. Co. v. Ohio, supra*, 245 U. S. at 583-584.]

The Congress, of course, cannot authorize a State to deny due process or impair the obligation of a contract any more than the State may do so of its own accord.

These constitutional problems are avoided by the construction placed upon the statute in the state court. That

construction is reasonable; it comports with the language of the Act; and it consists with the general legislative plan to which the specific statute relates. It is, therefore, a construction which the decisions of this Court required the court below to adopt.

5. The statutory situation to which the Congress was directing itself, and such extrinsic aids to interpretation as may be properly resorted to [see, *Wright v. Mountain Trust Bank, supra,* 300 U. S. at 463, and cases there cited; *McCaughlin v. Hershey Choc. Co.,* 283 U. S. 488, 493-494, and cases there cited; *United States v. Wrightwood Dairy Co.,* 315 U. S. 110, 125; *United States v. United Mine Workers,* 330 U. S. 258, 276-277], bear out the state court's interpretation of the proviso. With respect to housing projects initiated after March 1, 1949, the United States Housing Act of 1949 made it a condition of Federal aid that the municipality concerned approve the local housing agency's application for a preliminary loan and that it enter into an agreement with the local agency for the local cooperation required by the United States Public Housing Administration [Act of July 15, 1949, c. 338, Title III, sec. 301, 63 Stat. 422, 42 U. S. Code, sec. 1415(7)(a)(b).] The municipality was thus given the opportunity to prevent initiation of a project in its area by withholding the prerequisite approval and agreement.

The Federal law did not give any such opportunity to the municipality in respect of projects initiated *before* March 1, 1949. [Act of Sept. 1, 1937, c. 896, sec. 15,

50 Stat. 895.] No approval of any kind by the city was prescribed as a condition of Federal assistance.[6] As a result, the United States Public Housing Administration could enter into contracts for financial aid and continue to supply it to the developing agency even though the city in which the projects were to be constructed had timely and validly rejected them pursuant to a right so to do under the state law. It was to place the same limitation on the United States Public Housing Administration in relation to these ante-March 1, 1949 projects as had been imposed with respect to post-March 1, 1949 projects, that the proviso under discussion was enacted.

The committee of the House of Representatives, which reported the bill out, said as much:

> ". . . This proviso will apply to projects initiated before March 1, 1949, the same local control exercised under the Housing Act of 1949 with respect to projects initiated after that date."[7]
>
> *House Report 384*, 82nd Congress, 1st Session, p. 16.

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[6]Petitioners' statement to the contrary [Pet. 12] is simply inaccurate. As a result the conclusion which they draw from this mistaken notion and the definition of the word "initiated" in the U. S. Housing Act of 1937, is similarly erroneous.

[7]The foregoing quotation is part of the same paragraph from which the quotation at pages 10-11 of the petition is taken and immediately follows the latter. We assume that petitioners' failure to indicate in the conventional manner that a portion of that paragraph had been omitted was an inadvertence. The fact remains that the omitted sentence gives a significance to that which precedes it which is destructive of petitioners' argument.

The meager discussion of the proviso in debate was inconclusive and to some extent inconsistent with the committee report. To that extent, therefore, it cannot be given any weight in construing the Act. [Cases cited, Point I, 5, *supra*.] Congressman Phillips, in explaining the conference report on the bill, stated that the purpose of the proviso was to enable cities to keep housing projects from being *started* in their areas. [97 Congressional Record, 10267 (Aug. 15, 1951).] That, of course, is quite a different thing from authorizing their abandonment after they have been commenced and binding contractual commitments in respect of them made. It is an explanation consistent with the committee-expressed purpose to apply to the earlier projects the same "local controls" as already existed in respect of the later ones. These controls, as we have seen, relate to initiation of the projects, not to subsequent cancellation.

Senator Maybank, on the other hand, made the remarks with respect to cancellation which are quoted at pages 11-12 of the petition. At a later time (but after Public Law 137 had been adopted) he explained that he meant cancellation by mutual agreement of the interested public agencies, not unilateral cancellation by a city alone. [98 Congressional Record 6582-6583, 6607-6608 (June 3 and 4, 1952).]

These two comments were, in substance, all of the discussion on the floor of Congress. Even if the two legislators who spoke had been in agreement, which they were not, their remarks could not be given effect to stultify the plain statement of purpose found in the committee report and in the language of the enactment itself.

## II.

## The Housing Act of 1937 Does Not Give to a City Any Power to Compel a Local Housing Agency to Terminate a Project.*

1. Nothing in the United States Housing Act of 1937 supports petitioners' assertion that it permits a city to terminate an initiated project whenever it desires to do so. [Pet. 19-20.] In point of fact, the Act indicates clearly that the only determination of changed conditions which the Federal government need recognize is one made by the developing agency. True enough, the Congress sought to give effect to "local determination of the need for low-rent housing . . ." [Act of July 15, 1949, c. 338, Title III, sec. 301, 63 Stat. 422, 42 U. S. Code, sec. 1415(7).] But the specific provisions by which that general purpose is implemented all relate to need for *initiating* a housing project. The only provision for change after this initial determination relates to the developing agency, not the city. [Act of Sept. 1, 1937, c. 896, sec. 14, 50 Stat. 895, as amended by Act of July 15, 1949, c. 338, Title III, sec. 304(g), 63 Stat. 426, 42 U. S. Code, sec. 1414.]

The Federal legislation makes the city a factor in the situation only at the start. Before the Federal government will render financial assistance to the developing agency the city must approve the agency's application for a preliminary loan and enter into a cooperation agreement with it. [Act of July 15, 1949, c. 338, Title III, sec.

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*The contention which petitioners urge in this regard, depending on the Housing Act generally rather than on the specific power claimed to be conferred by Public Law 137, was not made below and was not passed upon by the State Supreme Court.

301, 63 Stat. 422, 42 U. C. Code, sec. 1415(7)(a)(i), sec. 1415(7)(b)(i).] By refusing so to do the city may, in practical effect, prevent initiation of the project. The United States Housing Act of 1937, as amended, makes no provision for city participation at any other stage of the housing program.[9]

On the part of the developing agency, however, the Federal law requires a demonstration of local need as a condition of obtaining a contract for Federal aid. [Act of July 15, 1949, c. 338, Title III, sec. 301, 63 Stat. 422, 42 U. S. Code, sec. 1415(7)(a)(ii).] But, unlike the situation in respect of a city, the Federal Act provides for giving effect to subsequent changes found desirable by that agency. This it does by authorizing the United States Public Housing Administration to agree to modification or supersession of existing contracts with *the local housing agency,* when that can be done without impairing the rights of holders of the latter's obligations. [Act of Sept. 1, 1937, *loc. cit.*, sec. 14, as amended by Act of July 15, 1949, *loc. cit.*, sec. 304(g), 42 U. S. Code, sec. 1414.] The silence of the legislation in respect of any similar power in a city is thus doubly significant. [*Cf., United States v. McClure,* 305 U. S. 472, 477.]

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[9]Under the *State's* housing legislation the city may also prevent initiation of a project by refusing to approve the proposed development thereof. [*Cal. Stats.*, 1945, c. 466, p. 1450, sec. 1, now *Cal. Health & Safety Code*, sec. 34313; *Drake v. City of Los Angeles, supra*, 38 Cal. 2d 872, 243 P. 2d 525.] The State Supreme Court held that this was the extent of the city's control and that once having given its approval it could not withdraw it or compel cessation of the project. [R. 118-124, 126-129.]

2. The argument against the absence of any power in a city to terminate public housing [Pet. 20] is an argument for a change in the statutory law which presently withholds that power. It is not a reason for adding to the Federal legislation by interpretation, any more than it was for judicially amending the State law [R. 129], something which is not there and which must be assumed to have been intentionally omitted from it.

It is also an argument dependent on the erroneous premise that it is the city which determines the local need for housing and which controls development of the program after that need is ascertained. So far as the Federal legislation is concerned, the determination of local need is made and demonstrated by the housing authority, not the city. [Act of July 15, 1949, c. 338, Title III, sec. 301, 63 Stat. 422, 42 U. S. Code, sec. 1415(7)(a)(ii)]; and it is the authority which locally controls development of the project proposed to fill that need. The city's only power is to prevent commencement of the program by refusing to approve the preliminary loan applications or to enter into a cooperation agreement. [R. 118-124.]

Actually every argument advanced by petitioners is vitiated by recognition of the falsity of this premise. Nowhere in their reasoning do they give effect to the undeniable facts that the city and the housing authority are separate and independent bodies politic; that development, construction and operation of housing projects are committed to the authority, not to the city; and that, except for its power to prevent *initiation* in the ways to which we have referred, the city has been given no control over that development, construction or operation.

## III.

## The Question Presented Does Not Have the Public Importance Essential to Review on Certiorari.

1. The narrow question of statutory construction here presented does not have that public importance which is the basis of discretionary review. [See, *N. L. R. B. v. Pittsburgh S. S. Co.*, 340 U. S. 498, 502; *Layne & Bowler Corp. v. Western Well Works*, 261 U. S. 387.] The case is unique in its statutory, as well as its factual, setting, so that the Federal question involved is not likely to recur.

The statute from which the asserted power of nullification is drawn, being an appropriation measure for the fiscal year which ended June 30, 1952, is now *functus officio*. [See, *Minis v. United States, supra*, 40 U. S. (15 Pet.) at 445; *United States v. Dickerson, supra*, 310 U. S. at 561.] So far as we are advised, aside from the petitioning City only the City of Bakersfield, California, has seen in the proviso of Public Law 137 a grant of the power claimed; and since that City is also bound by the California law the decision in the instant cause applies equally to it. There is, therefore, no need for a precedent of national application on the transient Federal question presented.[10]

Petitioners state that thirty-nine cities have rejected housing projects by referendum. [Pet. 7.] They neglect

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[10]The case is, of course, important to the parties. Nor do we deny—in fact we have ourselves asserted [R. 22]—its national significance as a definitive interpretation of the *local* housing legislation. The housing laws of most of the states follow the same general pattern as California's. The decision below, therefore, can have persuasive force elsewhere. But, for the reasons indicated, the Federal question involved is very likely raised for the first and last time in the case at bar.

to inform the Court, however, that every one of these rejections (except three which took place *before* Public Law 137 was enacted and three thereafter cancelled by agreement between the city and the authority) was made in the manner contemplated by the Housing Act of 1937, *i. e.*, by a refusal of the city to enter into a cooperation agreement, not by an attempted abrogation after that and other valid agreements had been made by the City; that no litigation involving the rejecting city is pending as to any of these rejections, aside from the instant cause; and that in each instance it was the State law, not the Federal legislation, to which resort was had for the authority to reject by way of referendum.[11] Nor do they call attention to the fact that in states such as California, where the local law did not permit a referendum to be held on the question of rejection, attempts to take such a vote were prevented by the courts, thus emphasizing the Congressional purpose to refer such matters to the law of the state. [*Housing Authority v. Superior Court, supra,* 35 Cal. 2d 550, 219 P. 2d 457; *City of Galveston v. Trimble* (Tex. Civ. A.), 241 S. W. 2d 458, 460 (Writ of error dis.). *Cf., State ex rel. Great Falls Housing Authority v. City of Great Falls,* 110 Mont. 318, 331, 100 P. 2d 915, 922.]

2. The limitation on construction imposed by Public Law 137, while carried into the Independent Offices Appropriation Act for the current fiscal year [Public Law 455, 82nd Congress, 2nd Session, c. 578] was substantially modified by a provision in the Supplemental Appropria-

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[11]The foregoing information was obtained from the United States Public Housing Administration which examined its files relating to each proposed project involved.

tion Act, 1953. By the latter measure the prohibition of authorization to construct during the current fiscal period was made dependent, not alone upon the city's rejection, but as well upon its tender of reimbursement of all Federal funds advanced and of a release of all obligations of the United States in respect of the projects proposed to be cancelled.[12] [Public Law 547, 82nd Congress, c. 758, 2nd Session, 66 Stat. 644.] Since most, if not all, of those obligations arise under contracts with the local housing agency, tender of such a release would necessarily require that agency's concurrence in the cancellation. Rejection under this Act, therefore, will not raise the question of interpretation here involved, whatever may be the other questions thereby precipitated.

3. The argument for importance and novelty [Pet. 7-9] is for the most part grounded on the question-begging assumption that Public Law 137 gives to a city the power of rejection which the State has denied it. From that assumption petitioners conjure up a supposed refusal below to acknowledge the supremacy of Federal law. They thus profess to see in the decision a significance far beyond anything really involved in it.

Actually, the question which was posed and decided below was whether the asserted power had been granted, not whether, having been granted, it prevailed over the law of the State. In that view of the matter the question

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[12]The City of Los Angeles has not yet sought to take advantage of this legislation; and, in view of state constitutional debt limitations, it is not likely that it will be able to do so. [R. 123, 20.]

comes down to nothing more than the interpretation of a reasonably plain and uncomplicated sentence in an appropriation bill. And it is a question which, for the reasons already noticed, is of importance to no one save the parties here.

## Conclusion.

Because the only Federal question here involved has neither the general importance nor the substantiality required for review by this Court, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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